

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-4020

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

W. Lee Knight and Evelyn Knight,  
Petitioners - Appellants

v.

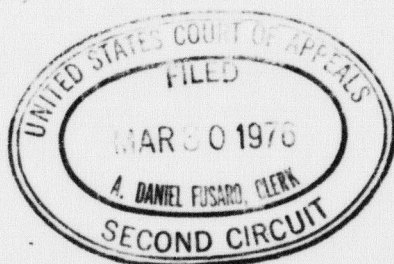
Docket No. 76-4020

Commissioner of Internal Revenue,  
Respondent - Appellee

B  
P/s

APPEAL - TAX COURT DECISION

APPENDIX FOR PETITIONERS - APPELLANTS



Henry Gelles  
Counsel for Petitioners  
Box 590  
Lake Placid, New York

PAGINATION AS IN ORIGINAL COPY



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# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. 5285-71

J. LEE KNIGHT and EVELYN KNIGHT  
 54 Algonquin Avenue  
 Saratoga Lake, New York 12983

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONER:

WILLY GELLES, Box 590, Lake Placid, New York

NAME 12946

ADDRESS \_\_\_\_\_

Date Month Day Year	Filings and Proceedings	Action	Served
July 19, 1971	PETITION FILED: FEE PAID July 19, 1971		July 21, 1971
Sep 20, 1971	ANSWER filed by Resp		Sep 21, 1971
Sep 20, 1971	REQ. by Resp for trial at NY, NY	GRANTED Sep 21, 1971	Sep. 21, 1971
Jan. 10, 1973	NOTICE for Trial at New York, N.Y. on March 19, 1973		Jan. 10, 1973
March 19, 1973	HEARING at New York, N.Y. before Judge Simpson		
	Petitioners motion for continuance, filed and granted		
	continued generally March 19, 1973 (NO obj. by resp)		APR 2 1973
Oct. 1, 1973	MOTION by Resp. for leave to file Amendment to Answer. (Amendment to Answer Lodged)	GRANTED Dec. 3, 1973	DEC 19 1973
Oct. 3, 1973	NOTICE of filing of Resp motion filed Oct. 1, 1973 and hearing on Oct. 31, 1973 at Wash.D.C. if objection filed by Oct. 18, 1973.		OCT 3 1973
Oct. 19, 1973	NOTICE OF OBJECTION by Petrs. to Resp. motion filed. (Timely P.M.).		OCT 24 1973
Oct. 26, 1973	ORDER, that case is stricken from the motions session on Oct. 31, 1973 at Washington, D. C. and the hearing on resp. motion filed Oct. 1, 1973 is continued to the Session on Dec. 3, 1973 at New York, New York.		OCT 30 1973
Dec. 3, 1973	HEARING at New York, New York before Judge Sterrett. Resp. Motion for leave to file amendment to answer filed Oct. 1, 1973 - Granted.		DEC 19 1973

(continued to page 2)

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W. LEE KNIGHT AND EVELYN KNIGHT			PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served	
Month Day Year				
Minutes cont'd)	Amendment to Answer lodged October 1, 1973			
Dec. 3, 1973	AMENDMENT TO ANSWER filed by Resp.			DEC 19 1973
Dec. 19, 1973	TRANSCRIPT of Dec. 3, 1973 rec'd.			
Sept. 30, 1974	NOTICE of trial on Sept. 30, 1974 at New York, N.Y.			Sept 27, 1974
Sept. 30, 1974	TRIAL at New York, New York before Judge Raum.			
	Stipulation of facts & Exhibits 1-A thru 22-V filed.			
	Serial briefs			
	PETR.'S OPENING BRIEF DUE: Nov. 11, 1974			
	RESP.'S ANSWERING BRIEF DUE: Dec. 11, 1974			
	PETR.'S REPLY BRIEF DUE: Jan. 3, 1975			
	SUBMITTED TO JUDGE RAUM			
Oct. 8, 1974	TRANSCRIPT of Sept. 30, 1974 received.			
Nov. 18, 1974	MOTION by Petr. for leave to file Brief out of time.			
	(Brief for Petitioner's Lodged)	GRANTED Nov. 19, 1974		NOV 20 1974
Nov. 19, 1974	BRIEF for the Petitioner filed.			NOV 20 1974
Dec. 19, 1974	RESPONDENT'S BRIEF IN ANSWER filed.			DEC 20 1974
Jan. 17, 1975	BRIEF IN REPLY by Petr. filed. (OK to file & serve per Judge)			JAN 20 1975
Mar. 25, 1975	MEMORANDUM OPINION filed, Judge Raum.			MAR 25 1975
	Decision will be entered under Rule 155.			
Sept. 11, 1975	RESPONDENT'S COMPUTATION filed.			SEP 12 1975
Sept. 12, 1975	NOTICE of filing of Resp's. Computation under Rule 155			SEP 12 1975
	and hearing on Oct. 15, 1975 at Wash., D.C..			
	(Objection due 5 days prior to hearing.)			
Oct. 15, 1975	HEARING at Washington, D.C. before Judge Raum.			
	Hearing held under Rule 155 - C.A.V.			
Oct. 16, 1975	DECISION ENTERED, Judge Raum.			Oct. 16, 1975
Oct. 17, 1975	TRANSCRIPT of Oct. 15, 1975 received.			
	(Continued on page 3)			

DOCKET NO. 5285-71

[illegible]



T. C. Memo. 1975-77

UNITED STATES TAX COURT

W. LEE KNIGHT and EVELYN KNIGHT, Petitioners v. COMMISSIONER  
OF INTERNAL REVENUE, Respondent

Docket No. 5285-71.

Filed March 25, 1975.

Henry Gelles, for the petitioners.

Curtis W. Berner, for the respondent.

MEMORANDUM OPINION

RAUM, Judge: The Commissioner determined a deficiency of \$8,906.81 in petitioners' income tax for the calendar year 1968. At issue is whether a debt which became worthless in 1968 was a nonbusiness debt, and consequently, whether petitioners were entitled to claim only a short term loss in that year subject to the statutory limitations in respect of such losses. All of the facts have been stipulated.

Petitioners are husband and wife; they resided in Saranac Lake, New York, at the time they filed their petition herein. In December, 1956, along with Jeanne and Jacques De Mattos, petitioners contracted to purchase certain property in Lake City, Florida, known as the Holiday Motel and Holiday Restaurant ("the Motel"). The transaction was consummated during the following month, and a warranty deed, mortgage and bill of sale were recorded on January 31, 1957. On February 8, 1957, these four persons registered with the county of Columbia, Florida, as doing business under the name "HOLIDAY MOTEL AND HOLIDAY RESTAURANT", with each designated as having a 25 percent interest in the business.

Subsequently, the same persons organized Dak Company, Inc. ("DAK") for which a certificate of incorporation was filed in Florida on April 26, 1957. The capital stock of DAK consisted of 100 shares of common stock, 50 shares of which were issued to the petitioners for \$17,500 and 50 shares to the De Mattoses for a like amount of cash. This stock was never thereafter transferred, nor was any additional stock issued at any time.

At the meeting of DAK's board of directors on May 23, 1957, petitioners were elected president and secretary of the corporation and authorized to enter into an agreement on its behalf to purchase the Motel from themselves and the De Mattoses



for \$225,200, payable as follows: \$35,000 by the issuance of 100 shares of DAK capital stock, \$40,000 by the issuance of demand notes at five percent interest, and the balance by the assumption of certain outstanding mortgages to which the property was subject.

The business of operating the motel and restaurant was conducted by DAK, as shown by its annual financial statements which were prepared by DAK's certified public accountants in reliance (without independent verification) on the books and records provided by management. Although record title to the property does not appear to have been transferred to DAK in accordance with the agreement referred to in the previous paragraph, that property was nevertheless carried as an asset on DAK's books and records and was listed as such in its financial statements for each year, except in the statement as of December 31, 1968. Similarly, the mortgage obligations in respect of the property were shown as a corporate liability in those statements, and deductions for depreciation, taxes, and interest were taken in the corporation's profit and loss statements. The record does not disclose any formal change in title to the property until November 20, 1968, when a warranty deed was recorded in Columbia County, Florida, purporting to convey all of the interest of petitioners in the Motel to persons named W. L. & Edna C. Summers.

In 1958, DAK's board of directors voted to pay petitioner W. Lee Knight and Jacques De Mattos \$5,000 each for services rendered in 1957, at which time they agreed that upon receiving these sums they would lend like amounts to the corporation. No evidence was offered suggesting that any other salary payments were ever authorized, and the corporate financial statements do not reflect any such payments for any year other than 1957.<sup>1</sup>

DAK suffered losses during 9 of 11 years from 1957 through 1968 (the stipulation and accompanying exhibits are silent with respect to 1966) during which period it received loans from its shareholders, made repayments of portions thereof, and had outstanding annual balances as follows:

1.

The financial statements indicate that the following amounts were expended for "Officers' life insurance" in the years indicated:

"OFFICERS' LIFE INSURANCE" EXPENSE

<u>Year</u>	<u>Amount</u>
1957	\$1,581.25
1958	1,868.75
1959	1,725.00
1960	1,581.25
1961	1,725.00
1962	1,725.00
1963	1,725.00
1964	431.25

Nothing in the record, however, discloses the identity of the beneficiaries or the owners of the policies.



<u>Year</u>	<u>Loan</u>	<u>Repayment</u>	<u>Balance as of December 31</u>
1957	\$40,000.00	\$18,896.00	\$21,104.00
1958	12,147.24	221.37	33,029.87
1959	---	---	33,029.87
1960	---	---	33,029.87
1961	---	---	33,029.87
1962	---	---	33,029.87
1963	---	---	33,029.87
1964	2,900.00	---	35,929.87
1965	---	800.00	35,129.87
1966	---	200.00	34,929.87
1967	2,211.51	---	37,141.38
1968	---	500.00	36,641.38

These debts of which petitioners' share in 1968 was \$18,320.69 became worthless in that year, but DAK was not dissolved until October 14, 1969 when a certificate of dissolution was filed with the Secretary of State of Florida.

The existence of a bona fide debt in the amount of \$18,320.69 which became worthless in 1968 is not disputed. The only matter

on which the parties disagree is the proper characterization of this bad debt. If the debt is a nonbusiness debt, then section 166(d)(1), I.R.C. 1954,<sup>2</sup> allows the deduction only as a short term capital loss. And section 166(d)(2) defines the term "nonbusiness debt" to mean a "debt other than -- (A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or (B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business." We hold that the debt in

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2. SEC. 166. BAD DEBTS.

(a) General Rule.--

(1) Wholly worthless debts.--There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

\* \* \* \* \*

(d) Nonbusiness Debts.--

(1) General rule.--In the case of a taxpayer other than a corporation--

(A) subsections (a) and (c) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months.

\* \* \* \* \*



controversy did not bear the necessary relationship to any trade or business conducted by petitioners, and that it therefore must be classified as a nonbusiness debt.

While it is true that upon acquisition of the motel property, the Knights and the De Mattoses filed a fictitious name registration dated February 8, 1957, in respect of the Holiday Motel and Holiday Restaurant business, DAK was thereafter incorporated, on April 26, 1957, to conduct that business, and the evidence shows that petitioners were merely stockholders and officers (as well as employees and directors) of that corporation. To be sure, naked title to the property remained in the individuals, who also were undoubtedly accountable as mortgagors, but the agreement between them and DAK placed the beneficial ownership in the corporation. In accordance with that arrangement, not only was the property treated as an asset of the corporation on its balance sheet, but the mortgage indebtedness in respect of the property was recorded thereon as its liability. And it was the corporation that deducted depreciation in respect of the property, as well as interest and taxes. In the circumstances, we conclude on the record before us that it was the corporation alone, and not petitioners, that conducted the motel and restaurant business.

Moreover, petitioners' relationship to that business was not of such character as to warrant treating DAK's liability to them as a business, rather than a nonbusiness debt. Certainly, their mere status as stockholders, officers and employees of DAK is not a sufficient basis to support their position. Cf. United States v. Generes, 405 U.S. 93; Whipple v. Commissioner, 373 U.S. 193. Nor does it appear that there were unusual circumstances present like those in Trent v. Commissioner, 291 F. 2d 669 (C.A. 2), where the loans were made to protect an employee's job and salary. The only salary that could even be treated as having been paid to petitioners was an item of \$5,000 in 1957. The evidence fails to show any other compensation during the years 1957-1968, apart, perhaps, from comparatively small amounts for life insurance during the years 1957-1964 (see footnote 1, supra) which might or might not on this record be susceptible of classification as compensation. Plainly, the loans to DAK by petitioners were not made to protect their salaries. Nor is there any basis for concluding that the loans were made in connection with their ownership of the real estate. Not only does the record fail to show that DAK paid them any rent for use of the property, but it affirmatively discloses that DAK treated the property as its own; petitioners' interest in the property was held for the benefit of DAK.



What we have said above amply disposes of petitioners' alternative contention that they were engaged in a joint venture with DAK. Whether a joint venture existed between petitioners and DAK is a question of fact for which the burden of proof rests on petitioners. Perlmutter v. Commissioner, 373 F. 2d 45, 49 (C.A. 10), affirming 44 T.C. 382; Hubert M. Luna, 42 T.C. 1067. In Beck Chemical Equipment Corporation, 27 T.C. 840, 848-849, we noted that,

The legal relationship known as a joint venture has been defined as a "special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation;" and also as "an association of persons to carry out a single business enterprise for profit." \* \* \*

However, "the essential question is whether the parties intended to, and did in fact, join together for the present conduct of an undertaking or enterprise," and among the many factors to be considered in determining whether a joint venture exists are:

The agreement of the parties and their conduct in executing its terms; the contributions, if any, which each party has made to the venture; the parties' control over income and capital and the right of each to make withdrawals; whether each party was a principal and coproprietor, sharing a mutual proprietary interest in the net profits and having an obligation to share losses \* \* \* whether business was conducted in the joint names of the parties; whether the parties filed Federal



partnership returns or otherwise represented to respondent or to persons with whom they dealt that they were joint venturers; whether separate books of account were maintained for the venture; and whether the parties exercised mutual control over and assumed mutual responsibilities for the enterprise.

Herbert M. Luna, supra, 42 T.C. at 1077-8. Here there is no evidence of an oral or written agreement between petitioners and DAK to form a joint venture, of Federal partnership returns having been filed, of separate books for the alleged joint venture, nor of the parties holding themselves out as joint venturers to persons with whom they dealt. From the financial statements of DAK it appears that the corporation owned the Motel and enjoyed all of the profits and bore all of the losses from its operation. Indeed it appears that whatever control over the enterprise petitioners enjoyed was not by reason of being joint venturers but because they were shareholders, officers and directors of DAK, and as the court stated in Skarda v. Commissioner, 250 F. 2d 429, 434 (C.A. 10),

The fact that the taxpayers exercised complete dominion and control over the corporation, were in charge of its administration and management, and fully directed its policies does not justify disregarding the corporate entity for tax purposes.

Bearing in mind that the burden of proof is upon petitioners, we cannot conclude on the materials before us that the debt in question was other than a nonbusiness debt. To reflect certain concessions

Decision will be entered under  
Rule 155.



Petitioner.

y.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 5235-71

Pursuant to the Memorandum Opinion filed herein March 25, 1973, directing that decision be entered under Rule 156, respondent on September 11, 1973, filed a proposed computation. At the hearing on October 15, 1973, no appearance was made by or on behalf of petitioners, and no proposed computation was filed. It is therefore

ORDERED and DECIDED: That there is an overpayment in income tax for the year 1968 in the amount of \$451.50, which amount was paid after the mailing of the notice of deficiency.

(1970) *ANDERSON*

၂၆၆၄၈.

Enter: OCT 16 1975

NOTICE OF APPEAL TO COURT OF APPEALS

UNITED STATES TAX COURT

W. Lee Knight and  
Evelyn Knight

Petitioners,

v.

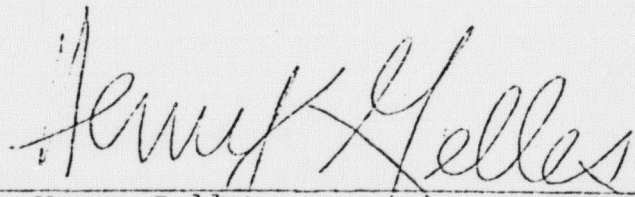
Commissioner of Internal Revenue,

Respondent

Docket No. 5285-71

NOTICE OF APPEAL

Notice is hereby given that W. Lee Knight and Evelyn Knight hereby appeal to the United States Court of Appeals for the Second Circuit from the decision of this court entered in the above captioned proceeding on the 16th day of October, 1975.



Henry Gelles,  
Counsel for Petitioners  
Box 590  
Lake Placid, New York  
(518) 523-2581



AGREEMENT FOR DEED

ARTICLES OF AGREEMENT, made this 12th day of December, 1956  
BETWEEN H. S. McKinnon, Sr., and his wife, Viola McKinnon, H. S.  
McKinnon, Jr., and his wife, Evelyn K. McKinnon, parties of the first part,  
and W. Lee Knight and his wife, Evelyn W. Knight, Jacques De Mattos and his  
wife, Jeanne DeMattos, of Saranac Lake, New York, parties of the second  
part,

WITNESSETH, That the said parties of the second part shall first  
make the payments and perform the covenants hereinafter mentioned on their  
part to be made and performed and said parties of the first part hereby co-  
venant and agree to convey and assure to the said parties of the second part  
their heirs, executors, administrators or assigns, in fee simple, clear of all  
except mortgages to Gulf Life Insurance Company  
encumbrances whatever, by a good and sufficient warranty deed, the following  
described property in the County of Columbia, State of Florida, known and  
described as follows, to-wit:

That part of Block 2, Unit A of Flora Crest Farms more particularly  
described as of July 3, 1952, as follows:

Begin at a point on the East Right-of-Way Line of State Highway No. 2  
(U. S. Highway No. 41), 40 feet, Northwest of the Northwest Corner  
of Lot 4 of said Block 2, Unit A. Flora Crest Farms and run thence  
Southeasterly along the East Right-of-Way Line of said Highway (Said  
right-of-way line being 33 feet on a perpendicular from the center of  
pavement), a distance of 740 feet, more or less, to the Southwest  
Corner of said Block 2, Flora Crest Farms; thence East, along the  
South line of said Block 2, a distance of 378 feet; thence Northwest,  
parallel to said U. S. Highway No. 41, a distance of 840 feet; thence  
West 378 feet to the point of beginning, in Columbia County, Florida,  
LESS AND EXCEPT a strip of land 17 feet wide along the West side  
conveyed to the State of Florida, for use and benefit of the State Road  
Department of Florida, by deed dated April 14, 1953, and recorded at  
Page 419 of Deed Book 86, public records of Columbia County, Florida.

And the said parties of the second part hereby covenant and agree to pay to the said parties of the first part the sum of TWO HUNDRED TWENTY SIX THOUSAND, TWO HUNDRED AND FIFTY and no/100 DOLLARS (\$226,250.00) in the manner following:

Down payment SEVENTY FIVE THOUSAND and no/100 DOLLARS (\$75,000.00); Second Mortgage in the amount of NINETY THOUSAND NINE HUNDRED SIXTY NINE and 33/100 DOLLARS (\$90,969.33). The first mortgage to be held by the Gulf Life Insurance Company of Jacksonville, Florida in the amount of FORTY-NINE THOUSAND THIRTY and 67/100 DOLLARS (\$49,030.67). The down payment to be paid in the following manner.

TWENTY THOUSAND AND no/100 DOLLARS (\$20,000.00) to be deposited in escrow by G. A. Buie, Jr. Escrow Agent in the Columbia County Bank at Lake City, Florida, as of this date and to be paid to the parties of the first part when the title to the property is found to be marketable and mortgage commitment has been issued by the Gulf Life Insurance Company to the parties of the second part or the mortgages have been executed and delivered and the sum of FIFTY-FIVE THOUSAND AND no/100 DOLLARS (\$55,000.00) to be delivered to G. A. Buie, Jr., Attorney -at-Law, Lake City, Florida, as Escrow Agent in the form of certified checks or cashier's checks upon execution of the second mortgage in the amount of NINETY THOUSAND, NINE HUNDRED SIXTY-NINE and 33/100 DOLLARS (\$90,969.33) to be held in the Escrow Account at the Columbia County Bank in Lake City, Florida, for delivery to said parties of the first part on January 2nd, 1957.



The second mortgage referred to above shall be payable in one hundred twenty (120) equal payments of SEVEN HUNDRED FIFTY-EIGHT AND 08/100 DOLLARS (\$758.08) per month, plus interest of 6% payable monthly in addition to the principal sum, the first payment being due on February 2nd, 1957 in the amount of SEVEN HUNDRED FIFTY-EIGHT and 08/100 DOLLARS (\$758.08) and on the second of each successive month thereafter until the principal and interest is paid in full.

Parties of the second part are to have a grace period of thirty (30) days in the event of default in any installment. Parties of the second part shall also be entitled to a reduction of fifteen percent (15%) in the event they elect to pay off the entire balance of the principal and interest due at any date during the first nine (9) years.

Parties of the first part agree to deliver possession on January 1st, 1957, but to continue to operate the motor court and restaurant to January 20th, 1957, and the parties of the first part shall have the right to live on the premises until January 20th, 1957.

Parties of the second part agree to pay all real estate commissions due for the sale of this property in the amount of ELEVEN THOUSAND, TWO HUNDRED FIFTY AND no/100 DOLLARS (\$11,250.00).

The above sales price which includes all furniture, fixtures, and equipment used in connection with the businesses known as the Holiday Motel and Holiday Restaurant, and an inventory of the personal property and equip-

ment shall be attached to this agreement and made a part hereof as if fully set out herein.

Parties hereto agree that any insurance on the buildings and equipment located on the above described property shall be pro-rated as of January 1st, 1957 and including any taxes due at that time.

Parties of second part agree to carry Comprehensive Insurance, Fire, Theft, Tornado Insurance, etc., with extended coverage in an amount sufficient to cover the principal amount of the combined mortgages with loss payable clauses to the mortgagees as their interest may appear.

Both parties hereto agree to the following:

1. Accept all advertising contracts as of January 1st, 1957.
2. All attorneys' costs to be divided.
3. All mortgage costs to be assumed by the parties of the second part, except the recording of the second mortgage and intangible taxes on the second mortgage which are to be paid by the parties of the first part.
4. All necessary books of account to remain on the property until the delivery of possession on January 20th, 1957.
5. A checking account to be opened in the name of the parties hereto to be used for the operation of the businesses from January 1st to January 20th, 1957 with power of attorney given to H. S. McKinnon, Jr. to write checks on the above account.
6. The present owners agree to instruct the purchasers in the operations of the businesses for a period of at least one week.



The parties of the first part agree not to enter into the motel business for a period of five (5) years within a radius of one hundred (100) miles of the above described property.

Parties of the first part to pay all taxes, impositions or assessments that may be legally levied or imposed upon said land subsequent to the year 1957. And in case of failure of the said parties of the second part to make either of the payments or any part thereof or to perform any of the covenants on their part hereby made and entered into, this contract shall, at the option of the parties of the first part, be, forfeited and terminated, and the parties of the second part shall forfeit the TWENTY THOUSAND AND no/100 DOLLARS (\$20,000.00) payment placed in Escrow under this contract, and such payment shall be retained by the said parties of the first part in full satisfaction and liquidation of all damages by them sustained and they shall pay TWO THOUSAND and no/100 DOLLARS (\$2,000.00) to the real estate broker handling the sale of the property.

In the event parties of the first part are unable to deliver merchantible title to the above described property, clear of all encumbrances, other than the mortgage to the Gulf Life Insurance Company, all payments placed in Escrow with G. A. Buie, Jr., Attorney-at-Law, Escrow agent shall be returned to the parties of the second part.

In the event parties of the second part are unable to obtain a loan or mortgage commitment from the Gulf Life Insurance Company, the forfeiture



clause stated above shall be void and the TWENTY THOUSAND and no/100 DOLLARS (\$20,000.00) payment shall be returned to the parties of the second part.

IT IS MUTUALLY AGREED , by and between the parties hereto, that the time of payment shall be an essential part of this contract, and that all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in presence of:

		Parties of the first part	
<u>Ernest K. Quinn</u>	)	<u>W. C. McQuinn Sr.</u>	(SEAL)
<u>Mary B. Whitcomb</u>	)	<u>Ursula M. McQuinn</u>	(SEAL)
_____	)	<u>H. W. McQuinn</u>	(SEAL)
_____	)	<u>Erlyne K. McQuinn</u>	(SEAL)

		Parties of the second part	
<u>Helen De Mattos</u>		<u>W. Lee Knight</u>	(SEAL)
<u>Muriel H. Smith</u>		<u>Evelyn W. Knight</u>	(SEAL)
_____		<u>James De Mattos</u>	(SEAL)
_____		<u>James H. Smith</u>	(SEAL)

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STATE OF FLORIDA, COLUMBIA COUNTY.

On this day personally appeared before me, an officer authorized to take acknowledgments of deeds, etc., H. S. McKinnon, Sr. and his wife, Viola McKinnon, H. S. McKinnon, Jr., and his wife, Evelyn K. McKinnon, parties of the first part to me well known, and known to be the persons who executed the within agreement, and acknowledged that they executed the same for the purposes therein expressed. And the said Viola McKinnon, and Evelyn K. McKinnon, wives of the said H. S. McKinnon, Sr. and H. S. McKinnon, Jr., upon an examination taken by me, separate and apart from their said husbands, acknowledged that they executed the said agreement freely and voluntarily and without any constraint, compulsion, apprehension or fear of or from their said husbands.

WITNESS my hand and seal this 12th day of December, 1956.

*Eva K. Akins*

EVA K. AKINS

Notary Public, State of Florida at Large  
My commission expires Feb. 7, 1959.

STATE OF NEW YORK,

On this day personally appeared before me, an officer authorized to take acknowledgments of deeds, etc., W. Lee Knight and his wife, Evelyn W. Knight, Jacques De Mattos and his wife, Jeanne DeMattos to me well known, and known to be the persons who executed the within agreement, and acknowledged that they executed the same for the purposes therein expressed. And the said Evelyn W. Knight and Jeanne DeMattos, wives of the said W. Lee Knight, and Jacques De Mattos, upon an examination taken by me, separate and apart from their said husbands, acknowledged that they executed the said agreement freely and voluntarily and without any constraint, compulsion, apprehension or fear of or from their said husbands.

WITNESS my hand and seal this 14th day of December, 1956.

*Marion H. Bes III*

MARION H. BES III  
Notary Public in the State of New York  
Franklin County No. 9  
Commission Expires March 30, 1957





## memorandum

to: Chief, Audit Division  
Jacksonville District

from: J. T. Hagerty, 417-12 JTH  
Estate & Gift Tax Group  
Jacksonville, Fla.

subject: Information requested per attached memorandum

Feb. 20, 1973

As requested by memorandum from Regional Counsel, dated Feb. 8, 1973, a search was made of the public records of Columbia County, Fla., for the purpose of tracing the chain of ownership of real estate sold by W. Lee & Evelyn Knight.

The Columbia County records showed no transfer of the real estate described in the memorandum from the Knights to DaK Inc., during 1957. The records show no conveyances from the Knights to DaK, Inc., in any other year from 1933 to 1971. The records show the following recorded instruments:

OR 46, page 134, warranty deed from H. S. & Viola McKinnon, et. al., to W. Lee Knight & Evelyn Knight, and Jacques & Jeanne DeMattos; dated 12/22/56; recorded 1/31/57; subject to mortgage, 7/3/52 from McKinnons to Gulf Life Insurance Co. in the amount of \$25,000, also subject to mortgage of 12/23/54 in the amount of \$25,000 to Gulf Life Ins. Co.

OR 46 p. 141, bill of sale from McKinnons to W. Lee & Evelyn Knight; and Jaques & Jeanne DeMattos; conveys all furniture, fixtures, etc., and all personal property located in Holiday Hotel & Holiday Restaurant; dated 1/18/57, recorded 1/31/57; subject to mortgages of Gulf Life Ins. Co.

OR 46 page 143, mortgage from the Knights and DeMattos to the McKinnons; includes real estate and personal property situated thereon; subject to two mortgages to Gulf Life Ins. Co.; refers to promissory note from the Knights to the McKinnons in the amount of \$90,969.33, dated 1/22/57; recorded 1/31/57.

OR 160, page 639, mortgage from the Knights & DeMattos to State Exchange Bank of Lake City; dated 3/10/64, recorded 3/11/64; included real estate and personal property thereon; refers to promissory note dated March, 1964, payable to mortgagee, in the amount of \$50,000.

OR 160, page 663, satisfaction of mortgage, McKinnons to Knights & DeMattos; note & mortgage of \$90,969.33 satisfied & cancelled; dated 3/3/64, recorded 3/11/64.

Internal Revenue Service

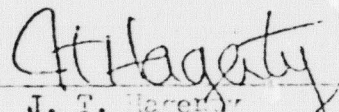


OR 242, page 13, warranty deed from W. Lee & Evelyn Knight to W. I. & Edna S. Summers; conveys subject property, subject to mortgage of Knights & DeWitts to State Exchange Bank in the amount of \$50,000, "which grantees agree to assure and pay." dated 11/9/38, recorded 11/20/38.

Search of the public records of Columbia County included the following:

1. in the name of W. Lee & Evelyn Knight-grantee index from 1/1/33 to 1/1/71; grantor index from 1/1/52 to 12/31/70.
2. in the name of Bak, Inc., grantee index from 1/1/56 to 12/31/70.

I hope that the above information will be sufficient.



J. T. Harer  
Attorney (Estate Tax)



# Registration of Fictitious Names

We the undersigned, being duly sworn, do hereby declare under oath that the names of all persons interested in the business or profession carried on under the name of \_\_\_\_\_

HOLIDAY MOTEL AND HOLIDAY RESTAURANT

at Lake City (Columbia County), Florida

and the extent of the interest of each, is as follows:

NAME	Extent of Interest
W. Lee Knight	25%
Evelyn W. Knight	25%
Jeanne DeMattos	25%
Jacques DeMattos	25%

*W. Lee Knight*  
Signature

*Evelyn W. Knight*  
Signature

*Jacques DeMattos*  
Signature

*Jeanne DeMattos*  
Signature

STATE OF FLORIDA

COUNTY OF Columbia

Sworn to and subscribed before me this 8<sup>th</sup> day of February, A. D. 1957

E. K. Akins

EVA K. AKINS

Notary Public, State of Florida at large

My commission expires Feb. 7, 1959.

Title



## MINUTES OF FIRST MEETING OF DIRECTORS

The first meeting of the board of Directors of Dak Company, Inc., was held at the Holiday Motel, City of Lake City, State of Florida, on the 23rd day of May, 1957, at 3:00 o'clock in the afternoon.

Present were Mr. W. Lee Knight, Mr. Jacques De Mattos, Mrs. Evelyn W. Knight and Mrs. Jeanne De Mattos of the Board.

Mr. Knight was unanimously chosen temporary Chairman, and Mrs. De Mattos was unanimously chosen temporary Secretary of the meeting.

The Secretary presented and read a waiver of notice of the meeting signed by all the directors, which was ordered filed.

The minutes of the first meeting of incorporators were read and approved.

The following persons were nominated for officers of the Corporation to serve until their respective successors are chosen and qualify:

President	W. Lee Knight
Vice President	Jacques De Mattos
Treasurer	Jeanne De Mattos
Secretary	Evelyn W. Knight

Ballots being duly cast by all the directors present, the Chairman announced that the aforementioned persons had been unanimously elected to the offices set before their respective names to assume the duties and responsibilities fixed by the By-laws.

The President thereupon took the chair, and the Secretary immediately assumed the discharge of her duties.



On motion duly made, seconded, and unanimously adopted, it was RESOLVED, That a corporate seal, the impression of which is affixed in the margin hereof, be and the same shall be the corporate seal of the Corporation.

A form of stock certificate was presented, and upon motion duly made, seconded and adopted, was unanimously approved.

Upon motion duly made, seconded, and unanimously carried, it was RESOLVED, That the office of Dak Company, Inc., located at the Holiday Motel on U. S. Highway 41 south of Lake City, in the County of Columbia, State of Florida, be and is hereby designated as the principal office of this Corporation within the State of Florida.

FURTHER RESOLVED, That whereas W. Lee Knight, Jacques De Mattos, Evelyn W. Knight and Jeanne De Mattos, owners of the following land and buildings; as shown by deed dated December 22nd, 1956 and recorded January 31st, 1957 in Official Record Book number ~~46~~, Pages ~~138-140~~ records of Columbia County, Florida; have offered to sell their land and the buildings thereon to this Corporation for the sum of two-hundred-twenty-five-thousand-two-hundred dollars (\$225,200.00) upon the terms hereinafter set forth and

WHEREAS, the Board of Directors deems it advisable that the corporation acquire said land and buildings from W. Lee Knight, Jacques De Mattos, Evelyn W. Knight and Jeanne De Mattos for the price aforementioned.

THEREFORE, BE IT RESOLVED, That this corporation purchase from W. Lee Knight, Jacques De Mattos, Evelyn W. Knight and Jeanne De Mattos the aforesaid land and buildings more specifically described as follows:



Commence at the Northwest Corner of Lot 4, Block 2 of Unit "A", Flora Crest Farms, according to plat on file in the office of the Clerk of the Circuit Court of Columbia County, Florida, and run Northerly, along the West line of Lot 3 of said Block "2", a distance of 40 feet; thence East, parallel to the South line of said Lot 3, a distance of 19.6 feet to the East Right of Way line of State Road No. 25, U. S. Highway No. 41, as now located for a point of beginning and run thence East, parallel to the South line of said Lot 3, a distance of 358.4 feet; thence Southerly, parallel to the East Right of Way line of said State Road No. 25, a distance of 840 feet; thence West 358.7 feet to the East Right of Way line of said State Road No. 25; thence Northerly, along said Right of Way line 840 feet to point of beginning; Said lands being a part of Section 21, Township 4 South, Range 17 East, Columbia County, Florida.

RESOLVED FURTHER, That the President and Secretary of this corporation are hereby authorized to enter into an agreement on behalf of this corporation with said W. Lee Knight, Jacques De Mattos, Evelyn W. Knight and Jeanne De Mattos to purchase the above described property for the sum of two-hundred twenty-five thousand two-hundred dollars (\$225,200.00) upon the following terms: \$35,000.00 to be paid by the issuance of 100 shares of capital stock of this corporation, \$40,000.00 to be paid by the issuance of debenture notes of this corporation payable on demand at the stated interest rate of 5% and the Corporation agrees to assume the following mortgages: The first mortgage payable to Gulf Life Insurance Company in the amount of \$49,030.33, Second mortgage payable to H. S. McKinnon in the amount of \$90,969.67 and commission note payable in the amount of \$10,200.00.



RESOLVED FURTHER, That the President and Secretary of this Corporation be and they hereby are authorized to execute all instruments and make all payments necessary to carry the foregoing resolution into effect, and to accept all documents, duly executed, which are or may be necessary for the transfer and conveyance of the aforesaid land and buildings to this corporation.

RESOLVED FURTHER, That the Treasurer be and she hereby is authorized to pay all fees and expenses incident to and necessary for the organization of this Corporation.

Upon motion duly made, seconded, and unanimously carried, the meeting was adjourned.

Leanne DeWitts  
Secretary

PROOF OF SERVICE

STATE OF NEW YORK )  
COUNTY OF ESSEX ) SS.:

MARGARET DORAN being duly sworn, deposes and says;  
that she is over 18 years of age and resides at Lake Placid.

On the 29th day of March, 1976 deponent served three copies  
of petitioners appendix by mail, addressed to respondent at  
U.S. Dept. of Justice, Washington, D. C. by depositing same  
enclosed in a postpaid properly addressed wrapper, in -- a  
post office -- under the exclusive care and custody of the  
United States post office department within New York State.

Margaret Doran

Sworn to before me this 29th  
day of March, 1976.

Henry Gelles  
Notary Public  
State of N.Y.  
C.E. 3-30-77



XXXXXX

February 13, 1952

At a meeting of the Board of Directors held at the Holiday Hotel, Lake City, Florida, at a motion made by Mrs. W. Lee Knight and seconded by Mrs. Jacques Bellatton, the Board of Directors voted to pay the sum of ten Thousand Dollars (\$10,000.) payable as follows, \$5000.00 to W. Lee Knight for services rendered from Jan. 1, 1951 to Jan. 1, 1952 and the sum of five thousand dollars (\$5,000.00) for the same period to be paid to Mr. Jacques Bellatton for services rendered. It was agreed by both Mr. Knight and Mr. Bellatton upon receipt of said monies that they would loan to the corporation the sum of \$10,000 ten thousand dollars. These transactions agreed upon and no further business arising, the meeting was adjourned.

BEST COPY AVAILABLE